No. 95-170

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Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

**October Term, 1995**

PEOPLE OF THE STATE OF NEW YORK,

*Petitioner,*

*against*

PORTER F. BANKS,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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# BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

## Respondent's Statement of Facts

Trooper Cuprill did not arrest Respondent after he observed him riding as a passenger in a vehicle without a seat belt. Instead, Cuprill chose an alternative course, writing out a traffic citation at the roadside scene. Cuprill did not justify his search of respondent's leased vehicle as incident to an **arrest**, but, instead argued, as did the People below, that he had reasonable suspicion to seek Jones' consent for the search of the vehicle arising from discrepancies in Jones' and respondent's accounts of their activities during the prior several days. Nor was the

search here conducted pursuant to any State Police's operating procedures. *Cf., United States v. Robinson,* 414 U.S. 218, 38 L.Ed.2d 427, 94 S.Ct. 467.

As the Court of Appeals noted, Cuprill stopped Banks and the driver of the vehicle respondent had leased, wrote out traffic citations, checked their licenses and vehicle registration which were clean and then started questioning them about matters entirely unrelated to the cause of the initial stop.

While New York State law authorized him to do so, Cuprill did **not** arrest the respondent on the basis of his failure to wear a seat belt, a traffic offense, not a crime in New York State. Instead, Cuprill made the clear decision **not** to arrest respondent on **this** ground. Indeed, throughout the proceedings below, the People did **not** seek to justify the search as having been conducted incident to a lawful arrest for **failure to wear** a seat belt. **Rather, the People below repeatedly sought to justify the search as incident to probable cause** provided by respondent and Jones' inconsistent answers to wholly **unrelated** inquiries.

The Court of Appeals rejected these bases for the search and the People now submit that because Cuprill *could have arrested* Banks incident to the latter's traffic offense, this should excuse the seizing of tangible evidence though that occurred on a different, non-justifiable ground, *i.e.,* that Cuprill had independent probable cause or reasonable suspicion that criminality was afoot.

## POINT ONE

## THE DECISION BY THE NEW YORK STATE COURT OF APPEALS RESTS ON INDEPENDENT STATE GROUNDS AND IS NOT SUBJECT TO REVIEW BY THIS COURT

The New York State Court of Appeals applied settled New York State constitutional law in holding that "[a] traffic stop constitutes a limited seizure of the person of each occupant", citing *People v. May,* 81 NY2d 725, 727; *People v. Harrison,* 57 NY2d 470, and in determining that the seizure here was excessive in light of the lack of reasonable suspicion that respondent was engaging in **criminal** activity when he was seized for committing a traffic infraction.

Article 1, section 12 of the New York State Constitution provides in relevant part, "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated...".

New York's highest Court has repeatedly stated that this Constitutional safeguard provides greater protection for its State's residents than does the Fourth Amendment. *People v. Bora,* 83 N.Y.2d 531, 611 N.Y.S.2d 796, 798, 634 N.Y.2d 168 (1994)("While the search and seizure provision of the State Constitution is similar to the wording of the Fourth Amendment and supports a policy of uniformity between State and Federal courts, we have held that our State provision, for reasons peculiar to New York, is subject to its own interpretation."); *People v. Keta,* 79 N.Y.2d 474, 496-97, 583 N.Y.S.2d 920, 593 N.E.2d 1328; *People v. Johnson,* 66 N.Y.2d 398, 406-07, 497 N.Y.S.2d 618, 488 N.E.2d 439; *People v. P.J. Video, Inc.,* 68

N.Y.2d 296, 508 N.Y.S.2d 907, 501 N.E.2d 556, *cert. denied*, 107 S.Ct. 1301, 479 U.S.1091, 94 L.Ed.2d 156.

In the instant matter, the Court of Appeals' decision is a binding interpretation of the New York State Constitution, not subject to this Court's discretionary review or reversal on the basis that the decision is an improper interpretation of the Fourth Amendment to the United States Constitution. For this reason alone, the petition for a writ of certiorari should be denied.

In submitting that the decision below is an application of New York Constitutional law, not the Fourth Amendment, we note that, in the New York Court of Appeals, the People argued, as they do here, that New York statutes permitted the intrusive questioning, unrelated to defendants' alleged seat belt violation and that the fruits of this questioning properly premised the vehicle search and respondent's arrest.

The Court of Appeals rejected this interpretation of state statutes and, applying the New York State Constitution, found that respondent's seizure was unwarranted and unconstitutional.

By citing to *People v. May, supra* and *People v. Harrison, supra,* and relying almost exclusively on state law precedent interpreting the New York State Constitutional safeguard against warrantless searches and seizures, the Court of Appeals made plain that it was premising its decision here on New York's Constitution, not the Fourth Amendment. The adequacy and independence of the state law basis for the challenged opinion is clear from the face of the New York State Court of Appeals' unanimous opinion and review is improper. *Michigan v. Long,* 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983).

Whether or not a traffic stop based upon probable cause of one criminal act constitutes a general warrant to seize and search under the Fourth Amendment is not properly reviewed through this case which rests, as explained, on independent state law grounds.

## POINT TWO

## THE NEW YORK COURT OF APPEALS DECISION IS NOT IN CONFLICT WITH AUTHORITY FROM ANY OTHER INFERIOR COURT

In seeking a writ of certiorari, Petitioner points to no authority from any other jurisdiction conflicting with the opinion it asks this Court to review. As Petitioner points to no conflict in authorities, this provides further reason for this Court to decline review, even assuming a reviewable federal issue.

## POINT THREE

## THE COURT OF APPEALS' DECISION IS A PROPER APPLICATION OF THE FOURTH AMENDMENT AND NOT SUBJECT TO REVIEW

In their Petition, the People contend that this Court has previously authorized searches incident to arrests for vehicle and traffic violations. But, this Court has never held that if a police officer arrests someone for failure to wear a seat belt, a traffic violation, not a "crime" under New York law (A25), and has no reasonable suspicion of any other criminal activity, the arresting officer may detain and broadly question the individual concerning his purpose in traveling, his destination and activities. Nor has this Court held that the act of arresting a person for a seat belt violation provides reasonable suspicion that the subject is

engaging in any form of CRIMINAL conduct or reasonable basis for searching the person's vehicle.[1]

In the instant case, the Court of Appeals agreed that Trooper Cuprill's "observations of Jones' seatbelt violation justified the initial stop of Jones and defendant in the vehicle." (A4). "However, once Cuprill's license and stolen vehicle radio check came back negative and he prepared the traffic tickets for the seatbelt violations, the initial justification for seizing and detaining Jones was exhausted *(see, People v. Milaski,* 62 N.Y.2d at 156, *supra*)."

While both State and Federal Constitutions allowed Trooper Cuprill to stop the vehicle based upon the seat belt infraction and certainly permitted him to make further inquiry concerning the driver's license and the vehicle's registration, once these proved out negative and once the officer **chose** to write traffic tickets returnable in Town Justice Court at a later date, no cause for further inquiry or investigation existed. As the Court of Appeals' noted, no further circumstance came to Trooper Cuprill's attention which "furnished him with reasonable suspicion that [Jones and Banks] were engaged in criminal activity". (A4). Thus, no circumstance allowed Cuprill to continue to involuntarily detain respondent and his carmate.

The People note that Cuprill **could have arrested** Banks and his co-defendant since they committed a "traffic offense" in his presence. However, as the Court of Appeals noted, the Trooper did **not** custodially arrest Banks on this basis and, instead, wrote him out a traffic citation. Rather, relying on alleged inconsisten-

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[1] We note that in New York driving without a seat belt is not a crime and that the punishment for this traffic violation is a "civil fine of up to fifty dollars." (A27).

cies between statements they allegedly made to him, Cuprill detained them, called for back-up, obtained the consent to search from Jones, who had not leased the vehicle, found contraband and then arrested both men.

In suppressing the contraband and finding that Cuprill had no reasonable basis to suspect that criminality was afoot after he wrote the traffic citations, the New York Court of Appeals found that these alleged inconsistencies were "innocuous" and that the totality of the circumstances provided Cuprill no reasonable suspicion that criminality was afoot, let alone probable cause to arrest. In so holding, the Court of Appeals interpreted Article 1, section 12 of the New York Constitution in a manner consistent with that of other states which have adopted restrictions on police practice arguably greater than those compelled by *United States v. Robinson, supra. See, Jackson v. State,* 791 P.2d 1023 (Alaska Ct.App. 1990), *State v. Kaluna,* 520 P.2d 51 (Haw. 1974), *State v. Owens,* 729 P.2d 524, 527 (Or. 1986), *People v. Brisendine,* 13 Cal.3d 528 (1975)(decision limiting police searches superseded by state Constitutional Amendment).

Even if this decision was solely premised on federal law, however, the People cite no federal authority showing that this ruling is incorrect as Cuprill did not custodially "arrest" respondent on the basis of the traffic infraction or conduct the search on that basis, but, did both on the basis of "innocuous" discrepancies given in interviews which bore no reasonable relationship to the seat belt violation and which did not give rise to probable cause or reasonable suspicion.

## Conclusion

For the above reasons, the petition for a writ of certiorari should be denied.

Dated: August 30, 1995
Goshen, New York

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